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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,298	05/10/2001	Nancy P. Camacho	00328/RSB	6040

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FRISHAUF, HOLTZ, GOODMAN & CHICK, PC
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EXAMINER

SMITH, RUTH S

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/853,298	Applicant(s) CAMACHO ET AL.	
	Examiner Ruth S Smith	Art Unit 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

Specification

The disclosure is objected to because of the following informalities: It is unclear as to where applicant provides a detailed description of figure 7A. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zakim et al in view of Hein et al and Guzelsu et al. Zakim et al discloses using either infrared reflectance spectroscopy or infrared attenuated total reflectance techniques for evaluating tissue. Zakim et al disclose using a probe placed near the tissue sample. The test can be performed either in-vivo or in-vitro. The detected infrared radiation is examined with regard to frequency, intensity or bandwidth and compared to known values to determine the condition of the sample. Zakim et al disclose the use of both near-infrared radiation and mid-infrared radiation. In the absence of any showing of criticality, the specific type of analysis performed on the obtained spectra would have been an obvious design choice of known equivalents in the art. Zakim et al fails to specifically disclose the use of a fiber optic probe and evaluation of connective tissue.

Guzelsu et al disclose using a fiber optic probe to optically examine connective tissue. It would have been obvious to one skilled in the art to have modified Zakim et al such that an optical fiber probe is used to examine the connective tissue as taught by Guzelsu et al. Such a modification merely involves the substitution of one known type of probe having a light source for another. Hein et al disclose infrared optical analysis of connective tissue (see column 8, lines 11-24). It would have been obvious to one skilled in the art to have used the probe of Zakim et al to examine connective tissue as taught by Hein et al and Guzelsu et al in order to allow one to provide a diagnosis of the connective tissue in the patient. Such a modification involves the selection of one known type of tissue in the patient to be analyzed. With respect to claims 6,8, it would have been obvious to one skilled in the art that the teachings of Zakim et al would have been applicable to any type of tissue including any type of connective tissue. With respect to claim 11, the use of a probe in combination with ATR would inherently include the use of the structure set forth in the claim.

Response to Arguments

Applicant's arguments filed February 2, 2004 have been fully considered but they are not persuasive. Applicant's arguments regarding Zakim et al are noted, however, the examiner does not understand applicant's interpretation of the reference as only being directed to analyzing cells. The reference clearly discloses diagnostic testing of **tissue** as well as cells. Applicant's attention is invited to the abstract and column 1, lines 6-13, column 10, lines 23-31, 57-60. With regard to Guzelsu et al and Hein et al, these references were cited by the examiner as a teaching to optically examine connective tissue. It would have been obvious to one skilled in the art that such tissue is then optically examined using the teachings of Zakim et al. The modification merely involves substituting one known type of optically examined tissue type for another. The modified examination would inherently detect modification in the molecular structure of the connective tissue.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth S Smith whose telephone number is (703) 308-3063. The examiner can normally be reached on M-F 5:30 AM- 2:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ruth S Smith
Primary Examiner
Art Unit 3737

RSS